IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.813 OF 2006
IN
CIVIL APPEAL NO.29 OF 1999
IN
SPECIAL CIVIL SUIT NO.75 OF 1997

M/s.Kavita Poultry Farm
Proprietor Smt. Kavita
Kashinath Rao ....Appellant/
orig.Defendant

V/s.

Ramesh Manohar Talathi ...Respondent/
Orig.Plaintiff

Mr.P.R. Naidu for Appellant.
Mr.S.M. Kazi for Respondent.

CORAM : V.M. KANADE, J.

DATED : 27th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellant and learned counsel for the Respondent.

2. Appellant is the original Defendant. Suit was filed by the Respondent/Orig.Plaintiff for the recovery of the amount due and payable from the Appellant/Defendant towards the sale of goods supplied by the Plaintiff to the Defendant. Trial Court decreed the suit. Being aggrieved by

the said order, An Appeal was preferred by the Appellant. The Appeal was dismissed. Being aggrieved by the two orders, present Second Appeal is filed.

3. It is alleged by the learned counsel for the Appellant that the Respondent had filed a criminal complaint U/s.138 of N.I. Act for the dishnour of cheque which was allegedly issued by the Appellant. He submitted that said criminal complaint was dismissed and the Appellant was acquitted of the offence with which he was charged. He submitted that finding in the said criminal case was not taken into consideration by both the Courts. He submitted that the Respondent had given an admission in his deposition that he was not aware of the delivery of the goods to the Appellant. He submitted that both the Courts below had not taken into consideration said admission which was given by the Respondent and, therefore, finding which was recorded by the both the Courts below was perverse. He invited my attention to the Judgment and Order of the Trial Court and lower Appellant Court and also judgment passed by the JMFC in criminal case filed by the Respondent U/s.138 of N.I. Act. He submitted that Respondent had not proved that he had delivered the goods to the Appellant and therefore, in the absence of proof of the delivery, the Respondent was

not entitled to a decree for the amount which was allegedly due and payable to him.

4. Submissions made by the learned counsel for Appellant cannot be accepted. Both the Courts below have recorded a concurrent finding of fact that goods were delivered by the Respondent to the Appellant. Said finding has been recorded by considering oral and documentary evidence on record. Finding recorded by the Criminal Court under proceeding U/s.138 of N.I.Act is not relevant in deciding suit for recovery of the amount due and payable by the Appellant to the Respondent. No substantial question of law is raised in this Second Appeal. Hence, Second Appeal is dismissed.

V.M. KANADE, J.